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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte MICHAEL KAI-YIN AU, DONALD ALEXANDER BOURNE,
QI CHENG, ASIT DAN, DANIEL MANUEL DIAS, DAVID FLETCHER
EVANS, RICHARD P. KING, IVAN LEW, JOHN F. SCHUMACHER,
HIDAYATULLAH H. SHAIKH, JOHNNY WAI-NANG WONG, and
YANCHUN ZHAO

Appeal 2008-5033
Application 09/859,705
Technology Center 3700

Decided: January 12, 2009

Before ERIC GRIMES, RICHARD M. LEBOVITZ, and STEPHEN
WALSH, *Administrative Patent Judges*.

WALSH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a method and data processing system for managing a catalog. The Examiner rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Claims 1-15 and 32-46, which are all the pending claims, are on appeal. Claims 1-15 define a method that involves performing steps on a primary data processing system and on a plurality of secondary data processing systems. The steps include sending catalog and user information, allocating inventory, and receiving and processing orders. Claims 32-46 define a data processing system that comprises means for carrying out the method steps.

The claims were rejected as follows:

- Claims 1-8, 11-15, 32-39 and 42-46 were rejected under 35 U.S.C. § 103(a) over the combined teachings of Westrope¹ and Kennedy²
- Claims 9, 10, 40 and 41 were rejected under 35 U.S.C. § 103(a) over the combined teachings of Westrope, Kennedy and Yamazoe.³

Appellants argue the claims in five groups, naming the first claim in each group as representative:

Claims 1-3, 8, 11-15, 32-44, 39 and 42-46 (App. Br. 9-19);

Claims 4, 5, 35 and 36 (App. Br. 19-20);

Claims 6, 7, 37 and 38 (App. Br. 21);

Claims 9 and 40 (App. Br. 21-23); and

Claims 10 and 41 (App. Br. 24.). The representative claims read as follows:

1. A method in a primary data processing system for managing a catalog, the method comprising:

¹ U.S. Patent No. 5,968,110, issued to Westrope et al., Oct. 19, 1999.

² U.S. Patent No. 6,167,380, issued to Kennedy et al., Dec. 26, 2000.

³ U.S. Patent Application No. 2001/0032148, by Yamazoe et al., published Oct. 18, 2001.

sending a catalog and user information to a plurality of secondary data processing systems located in a network data processing system;
allocating inventory associated with the catalog to the plurality of secondary data processing systems;
receiving an order from one of the plurality of secondary data processing systems; and
processing the order, in response to receiving the order.

4. The method of claim 3, wherein the request to allocate the inventory is received from the particular secondary data processing system upon a detection of a condition by the secondary data processing system.

6. The method of claim 1 further comprising:
periodically obtaining necessary shopping cart data from at least one secondary data processing system within the plurality of secondary data processing systems; and
forwarding the necessary shopping cart data to other secondary data processing systems within the plurality of secondary data processing systems.

9. The method of claim 8, wherein the markup language is extensible markup language.

10. The method of claim 1 further comprising:
detecting a presence of another secondary data processing system; and
sending the catalog to the another secondary data processing system in response to detecting the presence.

OBVIOUSNESS

Claims 1-8, 11-15, 32-39 and 42-46

The Examiner rejected claims 1-8, 11-15, 32-39 and 42-46 for obviousness over the Westrope and Kennedy patents. The Examiner found that Westrope disclosed the features of the claims except for the “allocating inventory” step. (Ans. 3.) The Examiner concluded it would have been obvious for one of ordinary skill in the art to have added Kennedy’s

allocation method to Westrope's method because it would have allowed the organization to designate a forecast entry such that available-to-promise product is always zero. (Ans. 3-4).

Appellants contend there are errors in the rejection associated with each group of claims. For the claims grouped with claim 1, the alleged errors are that (1) Westrope did "not teach sending *a catalog and user information* to a plurality of *secondary data processing systems*" (App. Br. 12-14); and (2) Kennedy did not teach allocating inventory (App. Br. 14-15). Appellants also contend the Examiner failed to give a proper reason for combining Westrope and Kennedy. (App. Br. 16-19).

For the claims grouped with claim 4, an alleged additional error is the Examiner's reliance on Official Notice for the notion that it was well known to set and detect a threshold condition in the inventory field. (App. Br. 20). For the claims grouped with claim 6, an alleged additional error is that neither Westrope nor Kennedy teach or suggest "necessary shopping cart data."

The issues with respect to this rejection are:

- whether Westrope taught sending a catalog and user information to a plurality of secondary data processing systems;
- whether Kennedy taught allocating inventory;
- whether the Examiner properly combined the Westrope and Kennedy teachings;
- whether the Examiner properly invoked Official Notice that it was well known to set and detect a threshold inventory condition; and
- whether Westrope and Kennedy taught or suggested "necessary shopping cart data."

Claims 9, 10, 40 and 41

The Examiner rejected claims 9, 10, 40 and 41 for obviousness over Westrope, Kennedy and Yamazoe.⁴ The Examiner's position is that the only claimed feature not found or suggested in the combined system of Westrope and Kennedy is extensible markup language. (Ans. 4). In the Examiner's view, it would have been obvious for one of ordinary skill in the art to have used extensible markup language mentioned by Yamazoe because it would have ensured a safe transmission of information or a document through a network. (Ans. 5).

Appellants contend that one of skill in the art would not have combined the references and arrived at the inventions of claim 9 and claim 10 because the references are directed toward solving different problems. (App. Br. 21-26). Appellants further argue that the combination does not teach or suggest claim 10's "detecting a presence of another secondary data processing system," or "sending the catalog to another secondary data processing system in response to detecting the presence."

The issues with respect to this rejection are:

- whether the references are directed toward solving different problems such that those of skill in the art would not have combined their teachings; and

⁴ The Examiner's statement of rejection omits the Kennedy reference. (Ans. 4.). The omission is a typo because the Examiner's explanation cites Kennedy and explains the reasons for relying on Kennedy. The typo is harmless because Appellants recognize that Kennedy is relied on, and Appellants address Kennedy in their arguments concerning this rejection. (App. Br. 22-25).

- whether the combination of references suggests “detecting a presence of another secondary data processing system,” and “sending the catalog to another secondary data processing system in response to detecting the presence.”

FINDINGS OF FACT

1. Westrope discloses a method and apparatus for selectively transmitting and displaying interactive catalog data selected by a user at a customer’s terminal. (Col. 2, ll. 49-52.)
2. Westrope’s interactive system comprises:
 - a central data processor system for storing an indexing electronic catalog data, including graphic and audio message data,
 - memory means for storing and selectively retrieving specific portions of a retailer catalog data specified by a user request,
 - a communication link to selectively establish a communication path between a user’s terminal and the central data processing system in response to a user inquiry,
 - an online interactive service control processor responsive to user commands to control retrieval of specified catalog data identified in a user request,
 - a user profile data processor for selectively generating customer profile data if authorized by the user/customer, and
 - order processing means responsive to a user order command for completing the accounting and order delivery tasks involved in fulfilling a user order. (Col. 2, ll. 52-67.).

3. Westrope's customer terminals may be personal computers coupled to the controller via any communication path, for example a telephone line or modem. (Col. 3, ll. 21-27.).
4. Westrope's system signals the central data processor when a user requests service and the central processor retrieves the digital catalog data for transmission to the user's terminal. (Col. 3, ll. 28-34.).
5. In Westrope's system, a user may select a variety of catalogs from a menu transmitted from the central data processor for display at the user's terminal. (Col. 3, ll. 34-39.).
6. In Westrope's system, a user may specify a specific catalog by name and the central data processor would then transmit only the selected catalog for display at the user's terminal. (Col. 3, ll. 43-47.).
7. Westrope's system activates an order processing system, a merchandizing data and accounting processor in conjunction with a customer request. (Col. 3, ll. 47-52.).
8. When a customer inquiry generates an order, Westrope's system accounting and order processor handles the order. (Col. 3, ll. 52-69.).
9. Westrope uses known mail order processing for packaging and delivery to the address the customer specifies. (Col. 3, l. 63 – col. 4, l. 2.).
10. Westrope's order fulfillment procedures may include having the ordered products assembled and mailed to the address directed by the customer. (Col. 7, ll. 37-45.).
11. Westrope's order process may follow the steps of order entry, processing, updating the order data base, updating the customer data

- base and updating the data bank and inventory memories. (Col. 9, l. 66 – col. 10, l. 3.).
12. Westrope's Figure 5 illustrates an embodiment of Westrope's invention showing a plurality of customer terminals 63, a catalog services data processor 67, an accounting order processing system 73 and a marketing data processor 75. (Col. 6, l. 65 – col. 8, l. 7.).
 13. Kennedy's patent is entitled "System and Method for Allocating Manufactured Products to Sellers." (Page 1).
 14. Kennedy's field of invention relates to "the fields of demand management, supply chain management, capacity management, and configure-to-order processes." (Col. 1, ll. 24-26).
 15. Kennedy provides a software system "for managing available to promise (ATP) and making promises to fulfill customer requests." (Col. 2, ll. 38-41).
 16. Kennedy's automatic allocation system "allows the organization to designate a forecast entry as a zero-ATP entry such that the available-to-promise product at the entry is always zero." (Col. 3, ll. 16-21).
 17. Yamazoe's patent application is entitled "SYSTEM OF AND METHOD FOR EXCHANGING INFORMATION ON COMMERCIAL TRANSACTION EXPLOITING ELECTRONIC CATALOG AND SYSTEM OF AND METHOD FOR COLLECTING AND STORING MARKETING INFORMATION." (Page 1).

18. Yamazoe states that in E-commerce, a selling company using an electronic catalog may use XML “(extensible markup language).” (Page 2, Para. 0045).

PRINCIPLES OF LAW

Section 103 of Title 35 prohibits a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

Obviousness is a question of law based on fact findings: the scope and content of the prior art are determined; differences between the prior art and the claims at issue are ascertained; and the level of skill in the art is resolved. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). Against that background, the obviousness or nonobviousness of the subject matter is determined. *Id.*; *In re Kahn*, 441 F.3d 977, 985 (Fed. Cir. 2006). The determination of obviousness is made with respect to the subject matter as a whole, not separate pieces of the claim. *See KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). What the prior art teaches, whether it teaches away from the invention, and whether it motivates a combination of teachings from different references are questions of fact. *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004). When references are combined, the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness of making the combination. *Id.*

Two criteria for determining whether the teachings of prior art references should be combined are:

- (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and
- (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

Kahn, 441 F.3d at 987 (citing *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992)). The law does not require that the references be combined for the reasons contemplated by an inventor. *Id.* at 988 (citation omitted). “The mere age of the references is not persuasive of the unobviousness of the combination of their teachings, absent evidence that, notwithstanding knowledge of the references, the art tried and failed to solve the problem.” *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977).

“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.” *In re Zletz*, 893 F.2d 319, 322 (Fed. Cir. 1989). The ordinary meaning of “plurality” includes “more than one.” *E.g., Bilstad v. Wakalopulos*, 386 F.3d 1116, 1123 (Fed. Cir. 2004). In patent parlance, the word “a” means “one or more,” absent evidence necessitating a departure from the rule. *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342-43 (Fed. Cir. 2008). “The subsequent use of definite articles ‘the’ or ‘said’ in a claim to refer back to the same claim term does not change the general plural rule, but simply reinvokes that non-singular meaning.” *Id.*

ANALYSIS

Claim 1

Appellants argue under headings A.i.i. and ii. of their Appeal Brief that the combined prior art does not teach sending “a catalog and user information” to a plurality of secondary data processing systems. (App. Br.

10-14). Referring to the Examiner's reliance on Westrope Figure 5, Appellants argue that Westrope does not send a catalog to accounting order processing system 73 or marketing data processor 75; and that catalog services data processor 67 sends only a "signal," not user information, to accounting order processing system 73 or marketing data processor 75. (App. Br. 12).

We do not agree with Appellants' reading that claim 1 requires sending "a catalog and user information" as a combined package that must include both a catalog and user information simultaneously sent to the same processor. The broadest reasonable interpretation of "sending a catalog and user information" does not require simultaneous transmission of a catalog and of user information, nor does it require that both be sent to one and the same destination. The broadest reasonable interpretation includes sending a catalog to a first processor and sending user information to another processor. Appellants have not shown how the language of the claim would lead to their narrower, more restrictive interpretation.

Westrope sends one or more catalogs to a plurality of secondary data processing systems, shown in Figure 5 as multiple "TV/display – telephone terminal 63." (FF3). We agree with the Examiner's finding that Westrope sends user information, not merely a signal, to both the accounting order processing system 73 and marketing data processor 75. (FF12). We do not read the claim as requiring the identical user information be sent to both processors. To be sure, the passage of Westrope that Appellants quote (App. Br. 11-12) says "the catalog data processing [sic] signals the accounting and order processor 73" . . . "to exercise the appropriate order processing requests to clear the customer/user's financial payment authorization and

initiate the order fulfillment procedure to have-the [sic] ordered products assembled and mailed to the address directed by the user/customer for that particular transaction.” (Col. 7, ll. 37-45) (emphasis added). The catalog data processor similarly signals the marketing data processor 75 to “generate . . . customer profile marketing data.” (*Id.* at ll. 45-53). We find that neither of the processors 73 or 75 could carry out its function without user information. We do not agree with Appellants’ argument that processors 73 and 75 only receive a signal, but instead find that they carry out their functions with user information they have been sent. (FF7-10).

Claim 1 uses the open transitional term “comprising.” Claim 1 is therefore open to multiple unrecited communication steps, such as information exchange between processors and memory files. In Westrope’s Figure 5, communication between marketing data processor 75 and customer file memory 77 is denoted with a two-way arrow, indicating that the user information stored in customer file memory 77 can be sent to marketing data processor 75. Similarly, communication between accounting order processing system 73 and the fulfillment procedure is denoted with a two-way arrow. We find that Westrope’s method also includes sending user /customer information to secondary data processors 75 and 77.

The ordinary meaning of “plurality” is more than one. We find that Westrope sends a catalog to more than one secondary data processing system, multiple terminals 63. The two-way arrows between terminals 63 and the system indicate that user information is also sent back to the terminals, e.g., if there are problems in the credit authorization. (Col. 8, ll. 65-68). Westrope also sends user information to more than one secondary data processing system when it sends to system 73 and processor 75.

Appellants argue that neither 73 nor 75 is a secondary data processing system. (App. Br. 13). We do not find a specialized definition for “secondary data processing system” in the Specification, nor do Appellants provide evidence of special usage in the art. According to Westrope, “accounting and order processor 73” is signaled by the catalog services data processor 67 to “exercise the appropriate order processing.” (Col. 6, ll. 37-41). The Examiner reasonably assigned the label “secondary” to processor 73, which processes data after being signaled by processor 67. Similarly, processor 75 processes a subset of data after being signaled by processor 67. We note that Westrope’s Figure 5 labels element 73 an “accounting order processing system,” but that the text at Col. 6, ll. 38-39 calls it “accounting and order processor 73.” Whether labeled as a system or processor, element 73 is described by Westrope as processing data, and we find the Examiner properly identified it as a secondary data processing system. In sum, we do not agree with Appellants’ narrow reading of the claim terms to exclude the prior art. We find that Westrope teaches the step of “sending a catalog and user information to a plurality of secondary data processing systems.”

Under heading A.1.iii. of their Brief, Appellants argue that the combined prior art does not teach “allocating inventory.” (App. Br. 14-15). The Specification does not provide a specialized definition for this term. Instead the Specification discloses that “[t]he actual process used to allocate inventory may be implemented in many ways.” (Spec. 17).

Appellants argue that “*Kennedy* teaches allocating units of manufacturing capability that *Kennedy* refers to as ‘available to promise’ units,” but “[a]vailable to promise’ units are units of manufacturing capability, not inventory.” (App. Br. 15). Because the units are not the

same, and because Appellants cannot find the word “inventory” in Kennedy, Appellants argue that Kennedy does not suggest “allocating inventory.” We disagree. Kennedy is teaching a product distribution method. The sentences preceding the Examiner’s citation show the context: “According to an additional aspect of the present invention, a software system wherein the organization promises product to the members based on an automatic allocation policy. The automatic allocation policy can be first-come-first-served, per allocated, per committed, member rank, or fixed split.” (Col. 3, ll. 13-18). In keeping with Appellants’ Specification, any of these allocating methods are covered in the claims.

Appellants quote from Kennedy at Col. 2, ll. 18-31, for the explanation that manufacturers must build intermediate items before receiving customer orders. (App. Br. 15). Pre-production is based on projections called “forecast orders,” and a product produced based on forecast orders is referred to as “available to promise” or “ATP.” In the passages quoted from Kennedy, Appellants emphasize that “ATP consists of quantities of products with associated dates that the products are scheduled to be available for delivery to the customer.” (*Id.*)

We are not persuaded that this is a distinction from Claim 1. In the passage Appellants first directed us to from Westrope (App. Br. 11), Westrope explains that after a user orders a product, the catalog data processor signals the accounting and order processor to initiate the order fulfillment procedure to have the products assembled. (FF10). That is, one of skill in the art following the teachings of Westrope would have to fulfill orders that might require product assembly. Kennedy’s software for allocating such products addresses that problem.

Under Appeal Brief headings A.1.iv.-v., Appellants argue that the Examiner failed to state a proper teaching, suggestion, or motivation to combine the references. According to Appellants, because Westrope and Kennedy “address different problems,” there is no such motivation, and the Examiner does not relate how Kennedy’s advantages relate to Westrope. (App. Br. 16-18). According to Appellants, Westrope does not involve products that must be manufactured, but Kennedy does. Appellants are overlooking the fact that Westrope’s catalog can include items that must be assembled and therefore are manufactured. (FF10). Kennedy teaches a way to allocate such products for order fulfillment. We find that Westrope and Kennedy both address that problem, and are therefore in the same field of endeavor. We also find that Kennedy’s teachings are reasonably pertinent to Westrope’s method. The combination of references is proper under either prong of the *Oetiker* test Appellants reference. (Br. 17.)

Under heading A.1.vi., Appellants argue that because claim 1 has not been disclosed in the six years since Kennedy issued, “the natural conclusion to draw is that claim 1 is non-obvious.” (App. Br. 19.). Accepting the passage-of-time-based conclusion of nonobviousness as their premise, Appellants then reason that “[b]ecause claim 1 is non-obvious, no teaching, suggestion, or motivation exists to combine the references to achieve the invention of claim 1.” *Id.* First, we reject Appellants’ passage-of-time-based conclusion because Appellants provide no evidence that the “art tried and failed to solve the problem.” *Wright*, 569 F.2d at 1127 (affirming obviousness from the teachings of three references that were 43, 66 and 97 years old, respectively, at the time of Wright’s invention). *Accord, Kahn*, 441 F.3d at 990-91 (citing *Wright*).

Second, we reject Appellants' cart-before-the-horse reasoning. Appellants propose to conclude nonobviousness based on one selected fact (six year passage of time), and then use that conclusion to suppress the existence of prior art facts relating to motivation. This is opposite the *Graham* analysis we are instructed to use. The legal conclusion of obviousness or nonobviousness is to be made after finding facts including the scope and content of the prior art, not the other way around. *E.g., Kahn*, 441 F.3d at 985.

Claim 4

Claim 4 adds the limitation that the request to allocate inventory is received "upon detection of a condition." The Examiner took Official notice that it was "well known" to set a condition because it would help in determining the location of missing products. (Ans. 4). Appellants object on the grounds that the Examiner is not entitled to take Official notice in this manner, and that the Examiner must withdraw the rejection or provide an affidavit. (App. Br. 20).

To traverse the Examiner's finding under 37 C.F.R. § 1.111(b), Appellants must state "why the noticed fact is not considered to be common knowledge or well-known in the art." Manual of Patent Examining Procedure § 2144.03. Appellants have not denied the truth of the Examiner's finding, nor have they pointed to any flaw in the Examiner's reasoning.

In context of the Westrope system that updates the inventory after processing an order, and Kennedy's automatic allocation software that allows a forecast entry, it is logical that Westrope would have used updated inventory information in an automatic way. (FF11). For example, if

inventory was depleted, the system would detect an empty condition and request an inventory allocation. Appellants' Specification does not define setting a condition with any particularity, and relies on pre-existing knowledge in the art to choose set points and implement detection. Under these circumstances, we do not find reversible error in the Examiner's use of Official notice.

Claim 6

The Examiner found that "Westrope discloses a system that is capable of providing a shopping card [sic, cart] data (items ordered by the user are stored in a safe place) from the secondary data processing system." (Ans. 4). Appellants argue that the Examiner "does not show how *Westrope* or *Kennedy* teach that the shopping cart data is *necessary*, as recited in claim 6." (App. Br. 21, Appellants' emphasis).

The Westrope and Kennedy inventions are directed to systems for fulfilling customer orders. Preserving at least the identity of the ordered items through the data processing steps is essential to both prior art systems so that the customer gets what the customer ordered, a "necessary" feature for the operation of a sales catalog. The Specification provides no special definition of necessary. We agree with the Examiner's finding that storing an ordered item is an example of obtaining "necessary" shopping cart data, and that step is found in the prior art disclosure.

Claim 9

According to Appellants, Yamazoe is directed to the problem of low efficiency when conducting online negotiations, which Appellants distinguish from online catalog sales. (App. Br. 22). Appellants' argument fails to account for the fact that Yamazoe's title references electronic

catalogs (FF17), and Yamazoe expressly teaches that a selling company using an electronic catalog may use XML. (FF18).

Appellants argue that because “the references address completely distinct problems that are unrelated to each other,” there would have been no reason to combine them, citing *Oetiker* and *Wood*. (App. Br. 22-23). However, all three references relate to sales and meeting customer demand. The combination meets the first test for whether references are from the same field of endeavor, regardless of the problem addressed, as explained in *Oetiker* and *Wood*. *Kahn*, 441 F.3d at 987 (citing *Oetiker*). Moreover, Westrope and Yamazoe expressly address selling merchandise with electronic catalogs, and Kennedy addresses software for scheduling to meet customer demands. All three are reasonably pertinent to the particular problem with which the Appellants are involved. These conditions meet the tests for same field of endeavor and for analogous art. *Id.*

Claim 10

Claim 10 adds two steps to the method of claim 1: (1) detecting the presence of another secondary data processing system, and (2) sending the catalog to the newly detected system. Appellants repeat their objections to the combination of references, but do not point to any specific error by the Examiner. Westrope’s Figure 5 shows plural TV/Display-Telephone Terminals 63, which may be IBM PC XT computers. (FF3). The system sends a catalog to the terminal at the user’s request. (FF6). In other words, Westrope’s system detects the presence of a new user at a secondary data processing system and sends a catalog. We affirm the Examiner’s findings.

CONCLUSIONS OF LAW

- Westrope taught sending “a catalog and user information;”
- Westrope taught sending to a “plurality” of secondary data processing systems;
- Kennedy taught allocating inventory;
- the Examiner properly combined the Westrope and Kennedy teachings;
- the Examiner properly invoked Official Notice that it was well known to set and detect a threshold inventory condition;
- Westrope and Kennedy taught or suggested “necessary shopping cart data;”
- the references are not directed toward solving different problems such that those of skill in the art would not have combined their teachings; and
- the combination of references suggests “detecting a presence of another secondary data processing system,” and “sending the catalog to another secondary data processing system in response to detecting the presence.”

SUMMARY

We affirm the rejection of claims 1-8, 11-15, 32-39 and 42-46 under 35 U.S.C. § 103(a) over the combined teachings of Westrope and Kennedy; and

we affirm the rejection of claims 9, 10, 40 and 41 under 35 U.S.C. § 103(a) over the combined teachings of Westrope, Kennedy and Yamazoe.

Appeal 2008-5033
Application 09/859,705

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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